



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Lynch Machinery Co., Inc.

File: B-228689

Date: September 24, 1987

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### DIGEST

1. Where an invitation for bids requires descriptive literature to establish compliance with solicitation specifications, bid submitted with literature that does not address or otherwise show compliance with the specifications must be rejected as nonresponsive.

2. Bidder cannot cure the inadequacy of submitted descriptive literature with post-bid opening explanations regarding the meaning of the bid.

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### DECISION

Lynch Machinery Co., Inc., protests the rejection of its bid as nonresponsive and the award of a contract to Meyer Machinery Co. under invitation for bids (IFB) No. 2-32924(JEP), issued by the National Aeronautics and Space Administration (NASA) for a 55-ton hydra-mechanical press brake (a special press used to bend metal). NASA rejected the bid because Lynch's descriptive literature failed to show that Lynch's press brake would be equipped with a required front operated back gauge.<sup>1/</sup>

We deny the protest.

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<sup>1/</sup> A back gauge is an adjustable stop consisting of a bar or fingers located in back of the press brake. It assures that each sheet of metal will be inserted the same distance into the press brake and, consequently, will be bent in the same place when the machine is operated. We understand that the machine operator normally has to go to the rear of the machine to adjust the back gauge. The requirement for front operation means that the press brake is constructed so that the machine operator can alter the adjustment without leaving the front of the machine.

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The IFB specified a number of technical requirements, including the front operated back gauge requirement, and a requirement that the back gauge have micrometer stops calibrated in thousandths of an inch. The IFB stated that the bidder had to submit descriptive literature establishing that the product offered conformed in detail to the those technical requirements with respect to design, materials, components, performance characteristics, and methods of manufacture, assembly, construction, or operation. Bidders were told that the literature would be used for technical evaluation, and were cautioned that failure of a firm's literature to show compliance would be grounds for rejection of the bid.

Lynch contends that its bid was improperly rejected, arguing that it submitted descriptive literature with the bid showing the availability of "heavy duty back gauges" as an optional item. In Lynch's view, this demonstrated that the press brake it was offering would conform to the specifications, since it allegedly is common knowledge in the industry that any press brake can be furnished with a front operated back gauge. Lynch has provided us with a copy of its bid worksheet showing that its price included the back gauge.

Where descriptive literature is required to establish conformance with the specifications, and bidders are cautioned that nonconformance will cause the bid's rejection, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product complies with the specifications. Morey Machinery, Inc., B-225367, Dec. 12, 1986, 86-2 C.P.D. ¶ 672.

NASA properly rejected Lynch's bid. The agency reports that it recognized that Lynch's literature referenced "heavy duty back gauges," without further description, as an available option. NASA further reports, however, that it rejected the bid because it could not determine if Lynch's heavy duty back gauges were also front operated, or how they were calibrated. Our review of Lynch's literature confirms that it does not establish whether Lynch furnishes (or actually intended to furnish) a back gauge that can be adjusted from the front of the machine, or how Lynch calibrates its back gauges, matters which clearly are material technical requirements that Lynch's literature should have addressed.

Regarding Lynch's provision of its bid worksheet (showing the intent to include the required back gauge), a bidder may not be afforded an opportunity after bid opening to explain or clarify its bid so as to make it responsive. A bidder's intention must be determined from the bid and material

available at bid opening. Photographic Analysis Co., Inc.,  
B-223787, Dec. 1, 1986, 86-2 C.P.D. ¶ 619. We therefore  
will not consider Lynch's worksheet.

Finally, we note that Lynch's bid is nonresponsive on still  
another ground. Lynch bid a straight hydraulic press brake  
instead of the required hydra-mechanical press brake.  
Lynch's letter of transmittal accompanying its bid states  
that Lynch did not bid the required design because it  
considered the straight hydraulic machine equal to or better  
than the hydra-mechanical machine. NASA reports that it  
specifically required a hydra-mechanical press brake because  
its current straight hydraulic press brakes cannot quickly  
and accurately duplicate previous machine settings during  
refabrication of previously made parts. Lynch, in its  
comments on the agency report, admits that NASA's statement  
of its need for the hydra-mechanical press brake "could very  
well be correct."

The protest is denied.

*for* *Seymour Efor*  
Harry R. Van Cleve  
General Counsel